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UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Case No. 1:24-cv-00331-LM-TSM

Frank Staples and Kathleen Bussiere, Plaintiffs

v.

Governor Kelly Ayotte (in her official capacity), et al., Defendants

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PLAINTIFFS' MOTION FOR SUBSTITUTION UNDER RULE 25(d)

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I. INTRODUCTION

Plaintiffs, Frank Staples and Kathleen Bussiere, respectfully move this Court to substitute Governor Kelly Ayotte for former Governor Chris Sununu in her official capacity pursuant to Federal Rule of Civil Procedure 25(d).

Rule 25(d) mandates substitution when a public officer sued in their official capacity leaves office. Because Chris Sununu is no longer Governor of New Hampshire, his successor, Governor Kelly Ayotte, is automatically substituted as a defendant.

Key Points of Law:

- ✓ Substitution under Rule 25(d) is automatic and does not require a response or objection from Defendants.
- ✓ The case remains unaffected, as official-capacity claims continue against the office, not the individual.
- ✓ This substitution is procedural and does not affect the merits of the case.

Accordingly, Plaintiffs respectfully request that the Court order Governor Kelly Ayotte substituted as a defendant in place of former Governor Sununu.

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II. LEGAL BASIS FOR SUBSTITUTION

#### **A. Rule 25(d) Requires Automatic Substitution**

Federal Rule of Civil Procedure 25(d) states:

"An action does not abate when a public officer who is a party in an official capacity ceases to hold office. The officer's successor is automatically substituted as a party."

This rule prevents disruption of litigation and ensures continuity when government officials leave office. Courts routinely apply Rule 25(d) automatically, without requiring a separate motion or response from defendants.

Case Law Supporting Substitution:

*Hafer v. Melo*, 502 U.S. 21, 25 (1991) (official-capacity suits are against the office, not the individual).

*Kentucky v. Graham*, 473 U.S. 159, 166 n.11 (1985) (Rule 25(d) substitution is procedural and does not alter the case).

*Rodriguez v. City of Springfield*, 127 F.3d 15, 19 (1st Cir. 1997) (public officers are automatically substituted when they leave office).

Since Governor Ayotte is now the sitting Governor, she is automatically substituted as a matter of law.

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#### **III. REQUEST FOR RELIEF**

For the foregoing reasons, Plaintiffs respectfully request that this Court:

1. Substitute Governor Kelly Ayotte for former Governor Chris Sununu in her official capacity under Rule 25(d).
2. Amend the case caption and docket to reflect this substitution.
3. Confirm that substitution does not affect the pending claims or proceedings.

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Respectfully Submitted,



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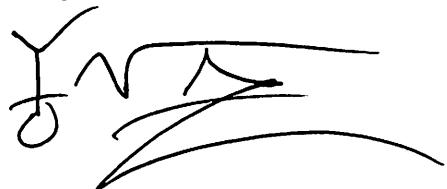
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Date: February 10, 2025

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#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion has been served via the Court's CM/ECF system on all counsel of record and via certified mail to any unregistered parties.



Frank Staples

/s/ Kathleen Bussiere (Electronic Signature)